

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

-

-

WRIT APPEAL No.2 of 2001

Between:

Smt. N. Ratnamma

... Appellant

AND

Government of Andhra Pradesh, rep., by its
Principal Secretary, Housing, Municipal
Administration and Urban Development Department,
Secretariat, Hyderabad and two others.

... Respondents

: JUDGMENT :

Counsel for the appellant : Shri M. Rama Rao

Counsel for respondent No.2: Shri P. Radha Krishna

Counsel for respondent No.3: Shri P. Venugopal

Dated: 4th June, 2007

Per C.V.NAGARJUNA REDDY, J.

This is an appeal for setting aside order dated 13.12.2000 passed by the learned Single Judge in W.P.No.10230 of 1999 whereby he dismissed the writ petition filed by the appellant for quashing memo No. 10031/01/98-5 M.A., dated 3.5.1999 issued by the State Government cancelling the regularization of the construction made by her.

The facts:

On an application made by the appellant, the Karimnagar Municipality (for short 'the Municipality') vide its proceedings No.1270/50/G1/94 dated 13.12.1994 granted permission to her for construction of cellar, ground floor and first floor on the plot situated in Sy.No.1104/D of Karimnagar District. While raising construction, the appellant violated the sanction plan. Therefore, notice under Sections 228 (1) and (2) of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act') was issued to her for removing the violations. Immediately thereafter, the appellant filed O.S.No.201 of 1995 in the Court of District Munsif, Karimnagar. She also filed application for temporary injunction, which was registered as I.A.No. 1137 of 1995. By an order dated 16.06.1995, the learned trial Court passed an order of status quo.

In the meanwhile, Government of Andhra Pradesh issued G.O.Ms.No.243, Municipal Administration, dated 22.05.1996 whereby the Municipalities were authorized to regularize the constructions made in violation of the building permission granted by the competent authority. In the purported exercise of that

power, the Municipality vide its proceedings dated 06.09.1996 regularized the unauthorized constructions made by the appellant.

Respondent No.3, who is neighbour of the appellant, made representation dated 26.10.1998 to the State Government (respondent No.1 herein) against the decision taken by the Municipality to regularize the unauthorized construction raised by the appellant. Respondent No. 1 vide its order dated 28.10.1998 stayed further construction and called for report from the Director of Town and Country Planning, Hyderabad. The latter submitted report dated 16.12.1998 with an observation that regularization of the illegal construction raised by the appellant was in violation of G.O.Ms.No.243 dated 22.05.1996, inasmuch as the said G.O. authorized the Municipality to regularize the unauthorized construction raised on an area of not exceeding 240 Sq. yards subject to the condition that there shall not be any objection by anybody or any dispute pending in any court of law, but despite knowing that the case filed by the neighbour was pending, the Commissioner of the Municipality deliberately allowed the construction to be made in violation of the sanction, building rules and Zonal Regulations and, later on, regularized the same.

The 1st respondent after issuing notices to the appellant and respondent No.3 and hearing then passed order on 03.05.1999 to the following effect:

“The main grievance of the neighbour is that the construction is hampering the ventilation and therefore the Commissioner is directed to revoke the regularization order issued in favour of Smt. N. Ratnamma and issued revised regularized plans with 5’ set back on sides.

The Commissioner should direct the applicant (Smt. N.Ratnamma) to demolish the construction in 5' portion. If the applicant (Smt. N.Ratnamma) fails to demolish the said construction, the Commissioner is requested to take necessary action to demolish the same."

The appellant challenged the aforementioned order in Writ Petition No.10230 of 1999. By an interim order, a learned Single Judge directed official respondents not to demolish the construction made by the appellant and also restrained her from raising further construction. On 16.07.1999, that order was modified to the effect that the official respondents shall not demolish the construction raised by the appellant. The interim order was further modified by a Division Bench of this Court in W.A.No.1070 of 1999. On 11.09.1999, the Commissioner of the Municipality along with the Town Planning Officer and Building Inspector inspected the premises in dispute and demolished a portion of the construction raised by the appellant. This led to the filing of contempt case, which was registered as CC.No.1393 of 1999.

Before the learned Single Judge, it was argued that in view of dismissal of the suit for mandatory injunction (O.S.No.212 of 1995) filed by the wife of respondent No. 3 for removal of alleged illegal construction made on the western side of her premises, there was no justification for respondent No.1 to pass order dated 03.05.1999. It was further argued that since the Municipality regularized the construction raised in deviation of the sanctioned plan in terms of G.O.Ms.No.243 dated 22.05.1996, the 1st respondent ought not to have imposed any conditions as was done

by the proceedings impugned in the writ petition.

The learned Single Judge rejected both the contentions and dismissed the writ petition. He held that while the scope of the suit was limited to the denial of easementary right of the plaintiff therein for proper ventilation, the 1st respondent was concerned with the legality or otherwise of the construction raised by the appellant in deviation of the sanctioned plan. As regards the conditions stipulated by the 1st respondent in its order dated 03.05.1999, the learned Single Judge held that in G.O.Ms.No.243 dated 22.05.1996, the Municipalities were authorized by the Government to regularize the unauthorized constructions made up to 30.03.1996 by following the guidelines issued in G.O.Ms.No.87 dated 12.02.1992 and as the appellant had raised the construction after 06.09.1996 in gross violation of the permission granted by the competent authority and the provisions of the Act, the condition imposed by respondent No. 1 was justified. The learned Single Judge also dismissed the Contempt Case by accepting unconditional apology offered by the contemnor.

Sri M. Rama Rao, learned counsel for the appellant reiterated the contentions raised before the learned Single Judge. He argued that in the face of dismissal of the suit for mandatory injunction filed by the wife of respondent No. 3, respondent No. 1 was not entitled to entertain the representation made by respondent No. 3 and pass order dated 3.5.1999 for demolition of construction in 5' feet portion. Learned counsel emphasized that the finding recorded by the trial Court in the suit filed by respondent No.3 is binding on the State Government and the

Municipality and, therefore, there could be no warrant for ordering demolition of the construction raised by the appellant. Sri Rama Rao further argued that once the Municipality exercised the power vested in it by G.O.Ms.No.243 dated 22.05.1996, there was no justification for the 1st respondent to have passed the order dated 03.05.1999 which virtually nullified the regularization of the construction carried out by the appellant. In support of his arguments, Sri M. Rama Rao, relied on the judgment of the Supreme Court in **M/s. Rajatha Enterprises v. S.K. Sharma**^[1], **P. Hemalatha v. Rajahmundry Municipality**^[2] and **Kukatpally Municipality v. P. Satyanarayana**^[3].

Sri P. Radha Krishna and Sri P. Venugopal, on the other hand, contended that the order of the learned Single Judge does not suffer from any patent error warranting interference of this Court in exercise of its Letters Patent Jurisdiction. They argued that the appellant carried out the construction in gross violation of the sanctioned plan and the Municipality committed a grave illegality by regularizing the unauthorized construction which resulted in depriving respondent No. 3 of his right to ventilation and other easementary rights and, therefore, the State Government did not commit any illegality by requiring the appellant to demolish a portion of the unauthorized construction.

We have thoughtfully considered the respective submissions. From a perusal of the counter-affidavit filed by Sri N.S.Hariharan, the Principal Secretary to Government, it is evident that the Director of Town and Country Planning submitted report

dated 16.12.1998 with a categorical observation that the then Commissioner of Municipality deliberately allowed the illegal construction made by the appellant to go on in violation of Building Rules and Zonal Regulations though he was aware of the fact that the appellant's neighbour (the wife of the 3rd respondent) had already filed suit against unauthorized construction being carried out by the appellant. He has also reported that the exercise of power by the Municipal Commissioner was aimed at favouring the appellant and that regularization of the unauthorized construction was in violation of G.O.Ms.No.243 dated 22.05.1996. Though the order dated 03.05.1999 of the 1st respondent does not contain detailed reasons, reference to the report dated 15.12.1998 of the Director, Town and Country Planning, Hyderabad is found therein. The contents of the report of the Director, Town and Country Planning have not been controverted either by the Municipality or by the appellant. Therefore, the finding recorded by the learned Single Judge that regularization of the construction made by the appellant was legally impermissible cannot be termed as erroneous.

While we have our own reservations about G.O.Ms.No.243 dated 22.05.1996, which authorized the Municipalities to regularize the unauthorized constructions made up to 30.03.1996, we refrain from adjudicating this issue because validity of G.O., is not under challenge. However, we have no hesitation to hold that the appellant cannot claim any benefit under the proceedings dated 06.09.1996 of the Municipality issued in the purported exercise its power under G.O. dated 22.5.2006 because she had raised illegal construction after 30.3.1996.

The record of the case shows that the State Government had considered the hardship caused to respondent No. 3 on account of the construction carried out by the appellant in gross violation of the sanctioned plan and the building regulations/byelaws, and directed demolition of unauthorized construction in order to maintain the minimum set back of 5' on either side of the building. Therefore, we do not find any valid ground to nullify order dated 3.5.1999.

We also do not find any error in the reasoning of the learned Single Judge that mere dismissal of the suit filed by the wife of the 3rd respondent does not denude the 1st respondent of its power to pass the order dated 03.05.1999 under which the appellant was directed to remove a portion of the illegal construction, which was highly detrimental to her neighbour. We entirely agree with the learned Single Judge that the scope of the suit and the proceedings before the Government are distinct and that they cover two different areas.

Before concluding, we may notice the judgments on which reliance has been placed by the learned counsel for the appellant in **P. Hemalatha v. Rajahmundry Municipality (supra)**. The learned Single Judge of this Court quashed notice of demolition by observing that the same did not specify any breach of the rules and the disputed construction was not a threat to the public health or the interest of the public. In **Kukatpally Municipality v. P. Satyanarayana (supra)**, a Division Bench of this Court held that every unauthorized construction need not be demolished and the Municipality should take into consideration the equity and public interest while exercising discretion whether to order demolition or

not. In **M/s. Rajatha Enterprises v. S.K. Sharma (supra)**, the Supreme Court held that the High Court was not justified in entertaining a public interest litigation and ordering demolition of the construction made in excess of the floor area ratio without going into the issue of public safety and convenience.

In our opinion, none of the above noted judgments has any bearing on the present case and if the same are considered in the light of the subsequent judgments of the Supreme Court in **M.I. Builders Pvt. Ltd. V. Radhey Shyam Sahu**^[4], **Friends Colony Development Committee v. State of Orissa**^[5], **Mahendra Baburao Mahadik v. Subhash Krishna Kanitkar**^[6] and **Rajinder Singh v. State of Haryana**^[7], it cannot be said that respondent No.1 acted illegally by directing the appellant to demolish a portion of the unauthorized construction made by her.

For the aforementioned reasons, the writ appeal is devoid of any merit and substance and the same is, therefore, dismissed.

As a sequel to dismissal of the writ appeal, WAMP.No.3 of 2001 filed by the appellant for interim relief is disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 04-06-2007.

ES

[\[1\]](#) AIR 1989 SC 860.

[\[2\]](#) 1988 (1) ALT 100.

[\[3\]](#) 1990 (2) ALT 202.

[\[4\]](#) (1999) 6 SCC 464.

[\[5\]](#) (2004) 8 SCC 733.

[\[6\]](#) (2005) 4 SCC 99.

[\[7\]](#) (2005) 9 SCC 1.